

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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EDWIN MALDONADO,
Plaintiff,

v.
OFFICER JOHN GUNSETT, et al.,
Defendants.

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ORDER

21 CV 3719 (VB)

DOC. #1
FILED. 6/10/2022

Plaintiff commenced the instant action by filing a complaint on April 26, 2021. (Doc. #1). Plaintiff filed an amended complaint on September 17, 2021. (Doc. #7).

On November 10, 2021, the Court entered an Order of Service containing a Valentin Order which directed the Attorney General to ascertain the identities of certain John and Jane Doe defendants. (Doc. #9).

By letter dated January 10, 2022 (Doc. #14), the Attorney General identified seven of the thirteen John and Jane Doe defendants—specifically John and Jane Doe defendants (1), and (8) through (13)—but advised the Court that it has been unable to identify the remaining six John Doe defendants—namely, John Doe defendants (2) through (7).

On January 12, 2022, the Court ordered plaintiff to (i) file a second amended complaint containing the names of the John and Jane Doe defendants identified by the Attorney General and (ii) supply additional identifying or descriptive details regarding the remaining, unidentified John Doe defendants. (Doc. #15). The Court ordered the Attorney General to ascertain the identities of the remaining John Doe defendants after reviewing the additional identifying details alleged in the second amended complaint.

On January 31, 2022, plaintiff filed the second amended complaint. (Doc. #17).

By letter dated May 31, 2022, which shall be separately docketed, plaintiff provided additional, identifying information regarding defendant “Maligen.”

By letter dated June 2, 2022, the Attorney General identified the remaining John Doe defendants, aside from defendant Maligen. (Doc. #48).

Accordingly, IT IS HEREBY ORDERED:

1. **By July 1, 2022, plaintiff shall file a third amended complaint.** Plaintiff shall use the third amended complaint form attached to this Order.
2. The third amended complaint must contain the full names of the additional John Doe defendants identified by the Attorney General.
3. **The third amended complaint will completely replace, not merely supplement, the existing complaint. Therefore, plaintiff must include in the third amended complaint all information necessary for his claims.** However, plaintiff is directed to include in his third amended complaint only those facts and documents he believes plausibly support a violation of his constitutional rights.
4. Plaintiff is reminded that any factual allegation in the third amended complaint must be true to the best of his knowledge, information, and belief. See Fed. R. Civ. P. 11(b)(3).
5. **If plaintiff fails to file a third amended complaint by July 1, 2022, the Court may dismiss the case for failure to prosecute or failure to comply with a Court order.** See Fed. R. Civ. P. 41(b).
6. Once plaintiff has filed a third amended complaint, the Court will screen the third amended complaint and, if necessary, issue an order directing the Clerk to issue summonses, complete the USM-285 forms with the addresses of the newly-named

defendants, and deliver to the U.S. Marshals Service all documents necessary to effect service.

7. **The named and previously-served defendants' time to answer, move, or otherwise respond to the second amended complaint is STAYED pending plaintiff's filing of the third amended complaint.**
8. By June 24, 2022, the Attorney General shall review the additional, identifying information provided in plaintiff's May 31, 2022, letter, and confirm whether it has been able to ascertain the identity of defendant Maligen.

The Court certifies under 28 U.S.C. § 1915(a)(3) that any appeal from this Order would not be taken in good faith, and therefore in forma pauperis status is denied for the purpose of an appeal. Cf. Coppedge v. United States, 369 U.S. 438, 444-45 (1962).

Plaintiff also must notify the Court in writing if plaintiff's address changes, and the Court may dismiss the action if he fails to do so.

Chambers will mail a copy of this Order to plaintiff at the address on the docket.

Dated: June 10, 2022
White Plains, NY

SO ORDERED:



Vincent L. Briccetti
United States District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Write the full name of each plaintiff.

No. _____
(To be filled out by Clerk's Office)

-against-

**THIRD AMENDED
COMPLAINT**
(Prisoner)

Do you want a jury trial?
 Yes No

Write the full name of each defendant. If you cannot fit the names of all of the defendants in the space provided, please write "see attached" in the space above and attach an additional sheet of paper with the full list of names. The names listed above must be identical to those contained in Section IV.

NOTICE

The public can access electronic court files. For privacy and security reasons, papers filed with the court should therefore *not* contain: an individual's full social security number or full birth date; the full name of a person known to be a minor; or a complete financial account number. A filing may include *only*: the last four digits of a social security number; the year of an individual's birth; a minor's initials; and the last four digits of a financial account number. See Federal Rule of Civil Procedure 5.2.

I. LEGAL BASIS FOR CLAIM

State below the federal legal basis for your claim, if known. This form is designed primarily for prisoners challenging the constitutionality of their conditions of confinement; those claims are often brought under 42 U.S.C. § 1983 (against state, county, or municipal defendants) or in a "Bivens" action (against federal defendants).

Violation of my federal constitutional rights

Other: _____

II. PLAINTIFF INFORMATION

Each plaintiff must provide the following information. Attach additional pages if necessary.

First Name	Middle Initial	Last Name
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State any other names (or different forms of your name) you have ever used, including any name you have used in previously filing a lawsuit.

Prisoner ID # (if you have previously been in another agency's custody, please specify each agency and the ID number (such as your DIN or NYSID) under which you were held)

Current Place of Detention

Institutional Address

County, City	State	Zip Code
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III. PRISONER STATUS

Indicate below whether you are a prisoner or other confined person:

Pretrial detainee

Civilly committed detainee

Immigration detainee

Convicted and sentenced prisoner

Other: _____

IV. DEFENDANT INFORMATION

To the best of your ability, provide the following information for each defendant. If the correct information is not provided, it could delay or prevent service of the complaint on the defendant. Make sure that the defendants listed below are identical to those listed in the caption. Attach additional pages as necessary.

Defendant 1:

First Name	Last Name	Shield #
Current Job Title (or other identifying information)		
Current Work Address		
County, City	State	Zip Code

Defendant 2:

First Name	Last Name	Shield #
Current Job Title (or other identifying information)		
Current Work Address		
County, City	State	Zip Code

Defendant 3:

First Name	Last Name	Shield #
Current Job Title (or other identifying information)		
Current Work Address		
County, City	State	Zip Code

Defendant 4:

First Name	Last Name	Shield #
Current Job Title (or other identifying information)		
Current Work Address		
County, City	State	Zip Code

V. STATEMENT OF CLAIM

Place(s) of occurrence: _____

Date(s) of occurrence: _____

FACTS:

State here briefly the FACTS that support your case. Describe what happened, how you were harmed, and how each defendant was personally involved in the alleged wrongful actions. Attach additional pages as necessary.

INJURIES:

If you were injured as a result of these actions, describe your injuries and what medical treatment, if any, you required and received.

VI. RELIEF

State briefly what money damages or other relief you want the court to order.

VII. PLAINTIFF'S CERTIFICATION AND WARNINGS

By signing below, I certify to the best of my knowledge, information, and belief that: (1) the complaint is not being presented for an improper purpose (such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation); (2) the claims are supported by existing law or by a nonfrivolous argument to change existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Federal Rule of Civil Procedure 11.

I understand that if I file three or more cases while I am a prisoner that are dismissed as frivolous, malicious, or for failure to state a claim, I may be denied *in forma pauperis* status in future cases.

I also understand that prisoners must exhaust administrative procedures before filing an action in federal court about prison conditions, 42 U.S.C. § 1997e(a), and that my case may be dismissed if I have not exhausted administrative remedies as required.

I agree to provide the Clerk's Office with any changes to my address. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Each Plaintiff must sign and date the complaint. Attach additional pages if necessary. If seeking to proceed without prepayment of fees, each plaintiff must also submit an IFP application.

Dated

Plaintiff's Signature

First Name

Middle Initial

Last Name

Prison Address

County, City

State

Zip Code

Date on which I am delivering this complaint to prison authorities for mailing: _____